

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ANA MALCA,

Docket #: 1:22-cv-3049

Plaintiff,

\*against\*

NYC SHOPRITE ASSOCIATES, INC.,

Defendant.

-----X

**PETITION FOR REMOVAL**

1. NYC SHOPRITE ASSOCIATES, INC. is a defendant in a civil action commenced in the Supreme Court of the State of New York, County of Kings bearing Index Number 505609/2022 E. A copy of the Summons and Complaint is attached hereto as **Exhibit "A"**.
2. Defendant NYC SHOPRITE ASSOCIATES, INC. is domiciled in, and hence a citizen of the State of Delaware under whose corporate laws it was founded and operates and has its principal place of business in the State of New Jersey.
3. Upon information and belief, plaintiff ANA MALCA, resides at 620 Avenue I, Brooklyn, New York, is a citizen and resident of the Kings County, State of New York.
4. This action was commenced on or about February 24, 2022, date of filing of the Summons and Complaint, by the purchase of an index number. Thereafter the Summons and Complaint was forwarded the New York State Secretary of State being received on February 28, 2022. Service of the summons and complaint by the New York State Secretary of State upon this party, NYC SHOPRITE ASSOCIATES, INC., was made on or about March 8, 2022.
5. Significant for the purposes of the jurisdiction of this court is that no monetary amount or ad damnum was included in or set forth in the complaint. Nor was any other writing served by plaintiff upon defendant advising of the actual monetary amount being sought of the defendant.

6. Together with its answer interposed in the State Court action served on March 10, 2022, defendant annexed a demand pursuant to CPLR 3017 requiring such a response as to the monetary amount that is being sought of defendant in this action. See **Exhibit "B"**, answer interposed on behalf of NYC SHOPRITE ASSOCIATES.
7. On or about May 13, 2022, plaintiff served a Verified Bill of Particulars dated April 29, 2022, containing the response to defendant's demand pursuant to CPLR §3017, which set forth a demand for damages, that being in the amount of \$1,000,000.00. Said amount being in excess of the jurisdiction amount set forth as a threshold for diversity purposes. See **Exhibit "C"**.
8. Accordingly, this petition is timely as it was filed pursuant to 28 U.S.C. §1446(b), within thirty (30) days of receipt of plaintiff's demand for monetary damages in this action. The time for filing has not expired.
9. This action is being removed to Federal Court based upon diversity jurisdiction pursuant to 28 U.S.C. §1332(a).
10. As noted above the parties to this action are citizens of different states.
11. This action is therefore one which may be removed to this court pursuant to 28 U.S.C. §1441(a) because this Court has original jurisdiction pursuant to 28 U.S.C. §1332(a).
12. Venue is proper pursuant to 28 U.S.C. §1441(a).
13. Pursuant to 28 U.S.C. §1446(d) this party, NYC SHOPRITE ASSOCIATES, has this day, served upon the Clerk, Supreme Court, Kings County, notification of the filing of this petition. A copy of the Notice of Removal filed in the Supreme Court of Kings County is attached hereto as **Exhibit "D"**.

**WHEREFORE**, pursuant to this provisions of 28 U.S.C. §§1441 and §§1446 defendant, NYC SHOPRITE ASSOCIATES, respectfully requests that this action be removed from the Supreme Court of the State of New York, Kings County and henceforth proceed in this Court.

Dated: Mineola, New York  
May 24, 2022

NYC SHOPRITE ASSOCIATES, INC.

By: *Bruce A. Torino*

BRUCE A. TORINO [BT 7772]  
TORINO & BERNSTEIN, P.C.  
*Attorneys for Defendant*  
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**CERTIFICATION**

This is to certify that a copy of the foregoing has been mailed, postage prepaid on this May 24, 2022, to HECHT, KLEEGER & DAMASHEK, P.C., 19 West 44<sup>th</sup> Street, Suite 1500, New York, NY 10036.

*Bruce A. Torino*

BRUCE A. TORINO

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## REMOVAL PETITION

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### **TORINO & BERNSTEIN, P.C.**

*Attorneys for Defendant*  
*NYC SHOPRITE ASSOCIATES, INC.*

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Our File Number: 007745-184493-GB01